

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the matter of:)	CG Docket No. 02-278
)	CG Docket No. 05-338
Petition of Zoetis Inc., formerly known as,)	
Pfizer Animal Health; Zoetis LLC;)	
and Zoetis Products, LLC)	

**PETITION OF ZOETIS INC., FORMERLY KNOWN AS PFIZER ANIMAL HEALTH;
ZOETIS LLC; AND ZOETIS PRODUCTS, LLC FOR RETROACTIVE WAIVER, OR IN
THE ALTERNATIVE, FOR DECLARATORY RULING**

Pursuant to Sections 1.3 and 1.2 of the Federal Communications Commission's ("Commission") rules,¹ Zoetis Inc., formerly known as Pfizer Animal Health; Zoetis LLC; and Zoetis Products, LLC (collectively "Zoetis Petitioners") respectfully request that the Commission grant a retroactive waiver of Section 64.1200(a)(4)(iv) for faxes that have been transmitted by or on behalf of Zoetis Petitioners, or in the alternative, that the Commission issue a declaratory ruling that Section 64.1200(a)(4)(iv) was not promulgated pursuant to the Section 227(b) of the Telephone Consumer Protection Act ("TCPA").

In the Commission's October 30, 2014 Order, it granted retroactive waiver of the opt-out requirement in Section 64.1200(a)(4)(iv) to numerous petitioners in response to the uncertainty and confusion surrounding whether the Commission's rules require an opt-out notice for faxes sent with prior express invitation or permission—i.e., solicited faxes.² The Commission also invited similarly situated parties to petition for retroactive waiver of the opt-out requirement.³ Zoetis Petitioners hereby submit that good cause exists to grant a retroactive waiver of Section

¹ 47 C.F.R. §§ 1.2, 1.3.

² *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 et al.*, Order, CG Docket Nos. 02-278, 05-338, FCC 14-164, ¶¶ 22-31 (rel. Oct. 30, 2014) ("October 30, 2014 Order").

³ *Id.* ¶ 22.

64.1200(a)(4)(iv) for faxes that have been transmitted by or on behalf of Zoetis Petitioners because they are similarly situated to the parties granted retroactive waiver in the Commission's October 30, 2014 Order. In the alternative, Zoetis Petitioners submit that a declaratory ruling would be appropriate to establish that Section 64.1200(a)(4)(iv) was not promulgated pursuant to Section 227(b) of the TCPA because the TCPA only authorizes the Commission to regulate unsolicited faxes.

INTRODUCTION

The TCPA prohibits the use of a fax machine to send an "unsolicited advertisement."⁴ In 2005, Congress enacted the Junk Fax Preventive Act to "require[] the sender of an unsolicited fax advertisement to provide specified notice and contact information on the fax that allows recipients to 'opt out' of any future fax transmissions from the sender."⁵ The plain language and scope of the TCPA is expressly limited to unsolicited faxes, which the statute defines to exclude faxes sent with prior express invitation or permission.⁶ A subsequently-issued Commission rule provided that a fax advertisement "sent to a recipient that has provided prior express invitation or permission to the sender must include an opt-out notice,"⁷ thereby appearing to impose an opt-out notice requirement even for *solicited* faxes. Confusingly, when issuing that rule, the Commission also issued an accompanying order (the "Junk Fax Order") that stated "'the opt-out notice requirement only applies to communications that constitute *unsolicited* advertisements.'"⁸

Zoetis Petitioners discover, develop, manufacture and commercialize a diverse portfolio of animal health medicines and vaccines designed to meet the real-world needs of veterinarians

⁴ 47 U.S.C. § 227(b)(1)(C).

⁵ October 30, 2104 Order ¶ 5.

⁶ 47 U.S.C. § 227(a)(5).

⁷ 47 C.F.R. § 64.1200(a)(4)(iv).

⁸ October 30, 2104 Order ¶ 24 (quoting *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Junk Fax Prevention Act of 2005*, CG Docket Nos. 02-278, 05-338, Report and Order and Third Order on Reconsideration, 21 FCC Rcd 3787, 3810 n.154 (2006)).

and the livestock farmers and companion animal owners they support. As a service to its veterinarian customers and their associated personnel, Zoetis Petitioners periodically invite those customers to participate in free webinars. The webinars typically feature nationally-recognized veterinary specialists addressing particular topics in animal health that are expected to be of particular interest and use to the invitees. Veterinarians who choose to register for and attend such free webinars are eligible for certified continuing education credit. Until relatively recently, invitations for Zoetis Petitioners' free certified continuing education programs have sometimes been sent to Zoetis customers via fax. Zoetis Petitioners maintain that those fax invitations were sent with prior express invitation or permission—i.e. that they were solicited.

Zoetis Petitioners are now facing a nationwide putative class action lawsuit alleging violations of the TCPA related to its invitations for the free certified continuing education webinars.⁹ The plaintiff in that lawsuit alleges that Zoetis Petitioners, or someone on their behalf, transmitted to the plaintiff and putative class members a fax advertisement that failed to contain a sufficient opt-out notice. *See* Compl., Ex. 1, ¶¶ 18-28. Although that plaintiff alleges that the faxed invitation he received from Zoetis Petitioners was unsolicited, *id.* ¶¶ 16, 39, his proposed class includes all persons who received the fax at issue regardless of whether it was solicited or unsolicited. *Id.* at ¶ 43.

The present Petition for Waiver does not request that Commission resolve the factual or legal questions raised in the pending litigation; those issues remain within the jurisdiction of the federal district court. Zoetis Petitioners seek only to obtain the same retroactive waiver of Section 64.1200(a)(4)(iv) granted to multiple petitioners in the Commission's October 30, 2014

⁹ *See* Complaint – Class Action, *Sturdy v. Medtrak Educational Services, et al.*, No. 3:13-cv-03350-SEM-BCG (C.D. Ill.), attached hereto as Exhibit 1.

Order. In the alternative, they seek a declaratory ruling by the Commission that Section 64.1200(a)(4)(iv) was not promulgated pursuant to the Section 227(b) of the TCPA.

ARGUMENT

A. Retroactive Waiver of Section 64.1200(a)(4)(iv) Compliance Requirement

The Commission may waive any provision of its rules “for good cause shown.”¹⁰ Specifically, the Commission may grant a waiver where “(1) special circumstances warrant a deviation from the general rule and (2) the waiver would better serve the public interest than would application of the rule.”¹¹ Applying these factors, Zoetis Petitioners are entitled to a waiver for the same reasons that the Commission found a waiver appropriate for the parties identified in its October 30, 2014 Order.

First, special circumstances warrant deviation from the general rule. As the Commission has explained, its Junk Fax Order “caused confusion or misplaced confidence” as to whether the opt-out requirement applied to solicited fax advertisements because it stated that the “opt-out notice requirement only applies to communications that constitute *unsolicited* advertisements.”¹² The Commission’s notice of intent to adopt Section 64.1200(a)(4)(iv) likewise “did not make explicit that the Commission contemplated an opt-out requirement on fax ads sent with prior express permission of the recipient” thereby further contributing to the confusion or misplaced confidence about the opt-out notice requirement.¹³ The inconsistent statement in the Junk Fax Order, combined with the lack of explicit notice, warrants deviation from Section 64.1200(a)(4)(iv) and supports retroactive waiver.¹⁴

¹⁰ 47 C.F.R. § 1.3.

¹¹ October 30, 2104 Order ¶ 23.

¹² October 30, 2014 Order ¶ 24 (quoting Junk Fax Order).

¹³ *Id.* ¶ 25.

¹⁴ *Id.* ¶ 26.

Second, granting Zoetis Petitioners a retroactive waiver would serve the public interest. Indeed, the Commission has already determined that granting a retroactive waiver from the opt-out notice requirement of Section 64.1200(a)(4)(iv) serves the public interest. In its October 30, 2014 Order, the Commission explained that the “confusion or misplaced confidence . . . left some businesses potentially subject to significant damage awards under the TCPA’s private right of action,”¹⁵ and that is precisely the circumstance the Zoetis Petitioners now face. The Commission further noted that the “TCPA’s legislative history makes clear our responsibility to balance legitimate business and consumer interests,” and concluded that, on balance, the public interest was served by “grant[ing] a retroactive waiver to ensure that any such confusion did not result in inadvertent violations of this requirement while retaining the protections afforded by the rule going forward.”¹⁶ Based on this finding, the Commission granted retroactive waiver to all of the petitioners and invited similarly situated parties to seek retroactive waivers.

Zoetis Petitioners now seek such a waiver because they are similarly situated to the parties who were granted a waiver in the Commission’s October 30, 2014 Order. Zoetis Petitioners did not understand that they needed to comply with the opt-out notice requirement for faxed webinar invitations sent to its customers who had provided prior express invitation or permission (i.e., faxes that were “solicited”). Nonetheless, like the petitioners already granted retroactive waiver, Zoetis Petitioners are facing a lawsuit that has the potential to subject them to significant monetary damages.¹⁷ Not only does the Commission have good cause to grant Zoetis Petitioners a retroactive waiver, but the Commission would serve the public interest by doing so.

¹⁵ *Id.* ¶ 27.

¹⁶ *Id.*

¹⁷ Because the plaintiff’s individual claim asserts that the fax at issue was unsolicited, any waiver by the Commission would not affect the plaintiff’s individual right of action. However, because Zoetis Petitioners face a putative class action filed on behalf of persons who received a solicited

B. Declaratory Ruling on Section 64.1200(a)(4)(iv)

Section 227(b) of the TCPA addresses only “unsolicited advertisements,” which are defined by the statute to exclude faxes transmitted with a person’s “prior express invitation or permission, in writing or otherwise.”¹⁸ Nowhere does Section 227(b) expressly regulate the transmission of *solicited* faxes or confer authority to do so on the Commission. Indeed, although Sections 227(b)(1)(C) and (2)(D) of the TCPA together prescribe what information must be included in an opt-out notice on the first page of an *unsolicited* fax, the statute imposes no similar requirement for *solicited* faxes. Notwithstanding the absence of any express statutory bases for doing so, Section 64.1200(a)(4)(iv) of the Commission’s rules purports to impose an opt-out notice requirement on any fax advertisement “that is sent to a recipient that has provided prior express invitation or permission.”¹⁹ And the Commission recently confirmed that its rule, as written, does require that solicited fax advertisements contain an opt-out notice, identifying Section 227(b) as providing the Commission with the authority to promulgate that rule.²⁰

The scope of the Commission’s rules adopted pursuant to statutory authority cannot be broader than the authority conferred by the statute itself.²¹ Because by its plain language Section 227(b) applies only to unsolicited faxes, it implicitly excludes solicited faxes from its scope. Section 64.1200(a)(4)(iv) therefore cannot be promulgated pursuant to the TCPA. Accordingly, Zoetis Petitioners respectfully request that the Commission issue a declaratory ruling,

fax, the grant of a waiver would prevent significant monetary damages caused by confusion over the opt-out requirement of Section 64.1200(a)(4)(iv).

¹⁸ 47 U.S.C. § 227.

¹⁹ 47 C.F.R. § 64.1200(a)(4)(iv).

²⁰ October 30, 2104 Order ¶¶ 14, 15, 19, 20.

²¹ *Chrysler Corp. v. Brown*, 441 U.S. 281, 302, (1979). (“The legislative power of the United States is vested in the Congress, and the exercise of quasi-legislative authority by governmental departments and agencies must be rooted in a grant of such power by the Congress and subject to limitations which that body imposes.”);

establishing that any regulation regarding *solicited* faxes, including Section 64.1200(a)(4)(iv), lacks a statutory basis in Section 227(b) of the TCPA.

CONCLUSION

For the foregoing reasons, Zoetis Petitioners respectfully request that the Commission grant them a retroactive waiver of Section 64.1200(a)(4)(iv) for any solicited fax advertisements sent by or on behalf of Zoetis Petitioners, or in the alternative, that the Commission issue a declaratory ruling that Section 64.1200(a)(4)(iv) was not promulgated pursuant to the Section 227(b) of the TCPA.

Dated: January 16, 2015

Respectfully submitted,

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ZOETIS INC., ZOETIS LLC, AND ZOETIS
PRODUCTS LLC

EXHIBIT 1

**IN THE UNITED STATES DISTRICT COURT
 FOR THE CENTRAL DISTRICT OF ILLINOIS
 SPRINGFIELD DIVISION**

DR. MARK W. STURDY d/b/a
 ROCHESTER VETERINARY CLINIC
 on behalf of itself and a class,

Plaintiff,

v.

MEDTRAK EDUCATIONAL SERVICES, LLC,
 ZOETIS, INC., formerly known as PFIZER
 ANIMAL HEALTH; ZOETIS LLC; ZOETIS
 PRODUCTS, LLC; and JOHN DOES 1-10,

Defendants.

COMPLAINT – CLASS ACTION

MATTERS COMMON TO MULTIPLE COUNTS

INTRODUCTION

1. Plaintiff Dr. Mark W. Sturdy d/b/a Rochester Veterinary Clinic brings this action to secure redress for the actions of defendants MEDtrak Educational Services, LLC, Zoetis, Inc., formerly known as Pfizer Animal Health, Zoetis LLC, and Zoetis Products, LLC, in sending or causing the sending of unlawful fax advertisements to telephone facsimile machines in violation of the Telephone Consumer Protection Act, 47 U.S.C. §227 (“TCPA”), the Illinois Consumer Fraud Act, 815 ILCS 505/2 (“ICFA”), and the common law.

2. The TCPA expressly prohibits unsolicited fax advertising. Unsolicited fax advertising damages the recipients. The recipient is deprived of its paper and ink or toner and the use of its fax machine. The recipient also wastes valuable time it would have spent on something else. Unsolicited faxes prevent fax machines from receiving and sending authorized faxes, cause wear and tear on fax machines, and require labor to attempt to identify the source and purpose of the unsolicited faxes.

JURISDICTION AND VENUE

3. This Court has jurisdiction under 28 U.S.C. §§1331 and 1367. *Brill v.*

Countrywide Home Loans, Inc., 427 F.3d 446 (7th Cir. 2005).

4. Personal jurisdiction exists under 735 ILCS 5/2-209, in that defendants:
 - a. Have committed tortious acts in Illinois by causing the transmission of unlawful communications into the state.
 - b. Have transacted business in Illinois.
5. Venue in this District is proper for the same reason.

PARTIES

6. Plaintiff Dr. Mark W. Sturdy d/b/a Rochester Veterinary Clinic is an individual with offices at 130 North John Street, Rochester, Illinois 62563 where he maintains telephone facsimile equipment. He is a resident and citizen of Illinois.

7. Defendant MEDtrak Educational Services, LLC is a limited liability company organized under the law of Pennsylvania with offices at 2200 Renaissance Blvd., Suite 1650, King of Prussia, PA 19406.

8. Defendant MEDtrak Educational Services, LLC provides continuing medical education programs. The programs are regularly funded by pharmaceutical manufacturers.

9. Defendant Zoetis, Inc., formerly known as Pfizer Animal Health, is a Delaware corporation with offices at 100 Campus Drive, Florham Park NJ 07932.

10. Defendant Zoetis LLC is a Delaware limited liability company with offices at 100 Campus Drive, Florham Park NJ 07932. It does business in Illinois. Its registered agent and office is CT Corporation System, 208 S. LaSalle St., Suite 814, Chicago, IL 60604. On information and belief, Zoetis, Inc., is a member and manager of Zoetis LLC.

11. Defendant Zoetis Products, LLC is a limited liability company with offices at 100 Campus Drive, Florham Park NJ 07932. It does business in Illinois. Its registered agent and office is CT Corporation System, 208 S. LaSalle St., Suite 814, Chicago, IL 60604.

12. On information and belief, Zoetis, Inc., Zoetis LLC and Zoetis Products, LLC have overlapping and common management personnel. For example, Clinton A. Lewis, Jr., is

president of both Zoetis LLC and Zoetis Products, LLC, as well as Executive Vice President and President of U.S. Operations for Zoetis, Inc.

13. Defendants Zoetis, Inc., Zoetis LLC, and Zoetis Products, LLC (collectively, “Zoetis”) are engaged in the development, manufacture, distribution and sale of pharmaceutical products intended for animal health.

14. Zoetis is engaged in the manufacture, distribution and sale of drugs for the prevention and treatment of leptospirosis, canine infectious respiratory disease, and Lyme disease. Zoetis produces a vaccine, Vanguard 4-way Lepto, for leptospirosis. Another vaccine, Vanguard High Titer, is intended to prevent canine infectious respiratory disease. Zoetis produces LymeVax®, the first canine Lyme disease vaccine licensed in the United States. Many Zoetis products involve immunology.

15. Defendants John Does 1-10 are other natural or artificial persons that were involved in the sending of the facsimile advertisements described below. Plaintiff does not know who they are.

FACTS

16. On April 7, 2011, plaintiff received the fax advertisement attached as Exhibit A on his facsimile machine.

17. Discovery may reveal the transmission of additional faxes as well.

18. Defendant MEDtrak Educational Services, LLC is responsible for sending or causing the sending of the faxes.

19. The faxes advertise continuing veterinary medical education seminars on leptospirosis, canine infectious respiratory disease, immunology, and Lyme disease.

20. The seminar and its promotion were funded by Zoetis under its former name of Pfizer Animal Health.

21. The fax refers to “Pfizer Animal Health.”

22. Zoetis products are an integral part of the prevention and treatment of the

conditions discussed in the seminar. It is impossible to discuss the subjects without referring to Zoetis products, whether specifically or by description.

23. Zoetis funds educational seminars relating to conditions for which they produce drugs for the purpose of generating sales of those drugs.

24. Zoetis therefore derived economic benefit from the seminars and the promotion of the seminar, including the sending of the faxes.

25. The TCPA and implementing FCC regulations require that all advertising faxes, even those sent with consent or pursuant to an established business relationship, have an opt out notice in prescribed form advising the recipient how to opt out of receiving further faxes.

26. The "opt out" notice (47 U.S.C. §227(b)(1)(C)) must meet these requirements:

(i) the notice is clear and conspicuous on the first page of the unsolicited advertisement;

(ii) the notice states that the recipient may make a request to the sender of the unsolicited advertisement not to send any future unsolicited advertisements to a telephone facsimile machine or machines and that failure to comply, within the shortest reasonable time, as determined by the Commission, with such a request meeting the requirements under subparagraph (E) is unlawful;

(iii) the notice sets forth the requirements for a request under subparagraph (E);

(iv) the notice includes –

(I) a domestic contact telephone and facsimile machine number for the recipient to transmit such a request to the sender; and

(II) a cost-free mechanism for a recipient to transmit a request pursuant to such notice to the sender of the unsolicited advertisement; the Commission shall by rule require the sender to provide such a mechanism and may, in the discretion of the Commission and subject to such conditions as the Commission may prescribe, exempt certain classes of small business senders, but only if the Commission determines that the costs to such class are unduly burdensome given the revenues generated by such small businesses;

(v) the telephone and facsimile machine numbers and the cost-free mechanism set forth pursuant to clause (iv) permit an individual or business to make such a request at any time on any day of the week; and

(vi) the notice complies with the requirements of subsection (d);

27. Subparagraph (E) states:

(E) shall provide, by rule, that a request not to send future unsolicited advertisements to a telephone facsimile machine complies with the requirements under this subparagraph only if–

(i) the request identifies the telephone number or numbers of the telephone facsimile machine or machines to which the request relates;

(ii) the request is made to the telephone or facsimile number of the sender of such an unsolicited advertisement provided pursuant to subparagraph (D)(iv) or by any other method of communication as determined by the Commission; and

(iii) the person making the request has not, subsequent to such request, provided express invitation or permission to the sender, in writing or otherwise, to send such advertisements to such person at such telephone facsimile machine; . . .

28. The opt out notice on Exhibit A does not comply.

29. Defendants are therefore barred from claiming an established business relationship with or consent by any recipient. *Holtzman v. Turza*, 11-3188 and 11-3746, at 3, 2013 WL 4506176 (7th Cir., August 26, 2013); *Nack v. Walburg*, 715 F.3d 680 (8th Cir. 2013).

30. The programs are conducted on a recurring basis.

31. On information and belief, Zoetis receives and reviews copies of material promoting the programs.

32. Defendants either negligently or wilfully violated the rights of plaintiff and other recipients in sending the faxes.

33. On information and belief, the fax attached hereto were sent as part of a mass broadcasting of faxes to generate attendance at the seminars.

34. On information and belief, defendants have transmitted similar unsolicited fax advertisements to at least 40 other persons in Illinois.

35. There is no reasonable means for plaintiff or other recipients of defendants' unsolicited advertising faxes to avoid receiving illegal faxes. Fax machines must be left on and ready to receive the urgent communications authorized by their owners.

COUNT I – TCPA

36. Plaintiff incorporates ¶¶ 1-35.

37. The TCPA makes unlawful the “use of any telephone facsimile machine, computer or other device to send an unsolicited advertisement to a telephone facsimile machine ...” 47 U.S.C. §227(b)(1)(C).

38. The TCPA, 47 U.S.C. §227(b)(3), provides:

Private right of action.

A person or entity may, if otherwise permitted by the laws or rules of court of a State, bring in an appropriate court of that State—

(A) an action based on a violation of this subsection or the regulations prescribed under this subsection to enjoin such violation,

(B) an action to recover for actual monetary loss from such a violation, or to receive \$500 in damages for each such violation, whichever is greater, or

(C) both such actions.

If the Court finds that the defendant willfully or knowingly violated this subsection or the regulations prescribed under this subsection, the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under the subparagraph (B) of this paragraph.

39. Plaintiff and each class member suffered damages as a result of receipt of the unsolicited faxes, in the form of paper and ink or toner consumed as a result. Furthermore, plaintiff’s statutory right of privacy was invaded.

40. Plaintiff and each class member is entitled to statutory damages.

41. Defendants violated the TCPA even if their actions were only negligent.

42. Defendants should be enjoined from committing similar violations in the future.

CLASS ALLEGATIONS

43. Pursuant to Fed.R.Civ.P. 23(a) and (b)(3), plaintiff brings this claim on behalf of a class, consisting of (a) all persons (b) who, on or after a date four years prior to the filing of this action (28 U.S.C. §1658), (c) were sent faxes in the form represented by Exhibit A (regardless of the date or location of the program or the identity of the faculty or whether labelled “Zoetis” or “Pfizer Animal Health”).

44. The class is so numerous that joinder of all members is impractical. Plaintiff alleges on information and belief that there are more than 40 members of the class.

45. There are questions of law and fact common to the class that predominate over any questions affecting only individual class members. The predominant common questions include:

- a. Whether defendants engaged in a pattern of sending unsolicited fax advertisements;
- b. The manner in which defendants compiled or obtained their list of fax numbers;
- c. Whether defendants thereby violated the TCPA;
- d. Whether defendants thereby engaged in unfair acts and practices, in violation of the ICFA.
- e. Whether defendants thereby converted the property of plaintiff.
- f. Whether defendants thereby created a private nuisance.
- g. Whether defendants thereby committed a trespass to chattels.

46. Plaintiff will fairly and adequately protect the interests of the class. Plaintiff has retained counsel experienced in handling class actions and claims involving unlawful business practices. Neither plaintiff nor plaintiff's counsel have any interests which might cause them not to vigorously pursue this action.

47. Plaintiff's claims are typical of the claims of the class members. All are based on the same factual and legal theories.

48. A class action is the superior method for the fair and efficient adjudication of this controversy. The interest of class members in individually controlling the prosecution of separate claims against defendants is small because it is not economically feasible to bring individual actions.

49. Several courts have certified class actions under the TCPA. *Sadowski v. Med1*

Online, LLC, 07 C 2973, 2008 U.S. Dist. LEXIS 41766 (N.D.Ill., May 27, 2008); *CE Design Ltd. v Cy's Crabhouse North, Inc.*, 259 F.R.D. 135 (N.D.Ill. 2009); *Targin Sign Sys. v Preferred Chiropractic Ctr., Ltd.*, 679 F. Supp. 2d 894 (N.D.Ill. 2010); *Garrett v. Ragle Dental Lab, Inc.*, 10 C 1315, 2010 U.S. Dist. LEXIS 108339, 2010 WL 4074379 (N.D.Ill., Oct. 12, 2010); *Hinman v. M & M Rental Ctr.*, 545 F.Supp. 2d 802 (N.D.Ill. 2008); *Clearbrook v. Rooflifters, LLC*, 08 C 3276, 2010 U.S. Dist. LEXIS 72902 (N.D. Ill. July 20, 2010) (Cox, M.J.); *G.M. Sign, Inc. v. Group C Communs., Inc.*, 08 C 4521, 2010 U.S. Dist. LEXIS 17843 (N.D. Ill. Feb. 25, 2010); *Holtzman v. Turza*, 08 C 2014, 2009 U.S. Dist. LEXIS 95620 (N.D.Ill., Oct. 14, 2009); *Kavu, Inc. v. Omnipak Corp.*, 246 F.R.D. 642 (W.D.Wash. 2007); *Display South, Inc. v. Express Computer Supply, Inc.*, 961 So.2d 451, 455 (La. App. 1st Cir. 2007); *Display South, Inc. v. Graphics House Sports Promotions, Inc.*, 992 So. 2d 510 (La. App. 1st Cir. 2008); *Lampkin v. GGH, Inc.*, 146 P.3d 847 (Ok. App. 2006); *ESI Ergonomic Solutions, LLC v. United Artists Theatre Circuit, Inc.*, 203 Ariz. (App.) 94, 50 P.3d 844 (2002); *Core Funding Group, LLC v. Young*, 792 N.E.2d 547 (Ind.App. 2003); *Critchfield Physical Therapy v. Taranto Group, Inc.*, 293 Kan. 285; 263 P.3d 767 (2011); *Karen S. Little, L.L.C. v. Drury Inns. Inc.*, 306 S.W.3d 577 (Mo. App. 2010); *Travel 100 Group, Inc. v. Empire Cooler Service, Inc.*, 03 CH 14510 (Cook Co. Cir. Ct., Oct. 19, 2004); *Rawson v. C.P. Partners LLC*, 03 CH 14510 (Cook Co. Cir. Ct., Sept. 30, 2005); *Nicholson v. Hooters of Augusta, Inc.*, 245 Ga.App. 363, 537 S.E.2d 468 (2000).

50. Management of this class action is likely to present significantly fewer difficulties that those presented in many class actions, e.g. for securities fraud.

WHEREFORE, plaintiff requests that the Court enter judgment in favor of plaintiff and the class and against defendants for:

- a. Actual damages;
- b. Statutory damages;
- c. An injunction against the further transmission of unsolicited fax advertising;

- d. Costs of suit;
- e. Such other or further relief as the Court deems just and proper.

COUNT II – ILLINOIS CONSUMER FRAUD ACT

51. Plaintiff incorporates ¶¶ 1-35.
52. Defendants engaged in unfair acts and practices, in violation of ICFA §2, 815 ILCS 505/2, by sending unsolicited fax advertising to plaintiff and others.
53. Unsolicited fax advertising is contrary to the TCPA and also Illinois law. 720 ILCS 5/26-3(b) makes it a petty offense to transmit unsolicited fax advertisements to Illinois residents.
54. Defendants engaged in an unfair practice by engaging in conduct that is contrary to public policy, unscrupulous, and caused injury to recipients of their advertising.
55. Plaintiff and each class member suffered damages as a result of receipt of the unsolicited faxes, in the form of paper and ink or toner consumed as a result.
56. Defendants engaged in such conduct in the course of trade and commerce.
57. Defendants' conduct caused recipients of their advertising to bear the cost thereof. This gave defendants an unfair competitive advantage over businesses that advertise lawfully, such as by direct mail. For example, an advertising campaign targeting one million recipients would cost \$500,000 if sent by U.S. mail but only \$20,000 if done by fax broadcasting. The reason is that instead of spending \$480,000 on printing and mailing his ad, the fax broadcaster misappropriates the recipients' paper and ink. "Receiving a junk fax is like getting junk mail with the postage due". Remarks of Cong. Edward Markey, 135 Cong Rec E 2549, Tuesday, July 18, 1989, 101st Cong. 1st Sess.
58. Defendants' shifting of advertising costs to plaintiff and the class members in this manner makes such practice unfair. In addition, defendants' conduct was contrary to public policy, as established by the TCPA and Illinois statutory and common law.
59. Defendants should be enjoined from committing similar violations in the future.

CLASS ALLEGATIONS

60. Pursuant to Fed.R.Civ.P. 23(a) and (b)(3), plaintiff brings this claim on behalf of a class, consisting of (a) all persons with Illinois fax numbers (b) who, on or after a date three years prior to the filing of this action, (c) were sent faxes in the form represented by Exhibit A (regardless of the date or location of the program or the identity of the faculty or whether labelled “Zoetis” or “Pfizer Animal Health”).

61. The class is so numerous that joinder of all members is impractical. Plaintiff alleges on information and belief that there are more than 40 members of the class.

62. There are questions of law and fact common to the class that predominate over any questions affecting only individual class members. The predominant common questions include:

- a. Whether defendants engaged in a pattern of sending unsolicited fax advertisements;
- b. Whether defendants thereby violated the TCPA;
- c. Whether defendants thereby engaged in unfair acts and practices, in violation of the ICFA.
- d. Whether defendants thereby converted the property of plaintiff.
- e. Whether defendants thereby created a private nuisance.
- f. Whether defendants thereby committed a trespass to chattels.

63. Plaintiff will fairly and adequately protect the interests of the class. Plaintiff has retained counsel experienced in handling class actions and claims involving unlawful business practices. Neither plaintiff nor plaintiff's counsel have any interests which might cause them not to vigorously pursue this action.

64. Plaintiff's claims are typical of the claims of the class members. All are based on the same factual and legal theories.

65. A class action is the superior method for the fair and efficient adjudication of this

controversy. The interest of class members in individually controlling the prosecution of separate claims against defendants is small because it is not economically feasible to bring individual actions.

66. Management of this class action is likely to present significantly fewer difficulties than those presented in many class actions, e.g. for securities fraud.

WHEREFORE, plaintiff requests that the Court enter judgment in favor of plaintiff and the class and against defendants for:

- a. Appropriate damages;
- b. An injunction against the further transmission of unsolicited fax advertising;
- c. Attorney's fees, litigation expenses and costs of suit;
- d. Such other or further relief as the Court deems just and proper.

COUNT III – CONVERSION

67. Plaintiff incorporates ¶¶ 1-35.

68. By sending plaintiff and the class members unsolicited faxes, defendants converted to their own use ink or toner and paper belonging to plaintiff and the class members.

69. Immediately prior to the sending of the unsolicited faxes, plaintiff and the class members owned and had an unqualified and immediate right to the possession of the paper and ink or toner used to print the faxes.

70. By sending the unsolicited faxes, defendants appropriated to their own use the paper and ink or toner used to print the faxes and used them in such manner as to make them unusable. Such appropriation was wrongful and without authorization.

71. Defendants knew or should have known that such appropriation of the paper and ink or toner was wrongful and without authorization.

72. Plaintiff and the class members were deprived of the paper and ink or toner, which could no longer be used for any other purpose. Plaintiff and each class member thereby

suffered damages as a result of receipt of the unsolicited faxes.

73. Defendants should be enjoined from committing similar violations in the future.

CLASS ALLEGATIONS

74. Pursuant to Fed.R.Civ.P. 23(a) and (b)(3), plaintiff brings this claim on behalf of a class, consisting of (a) all persons with Illinois fax numbers (b) who, on or after a date five years prior to the filing of this action, (c) were sent faxes in the form represented by Exhibit A (regardless of the date or location of the program or the identity of the faculty or whether labelled “Zoetis” or “Pfizer Animal Health”).

75. The class is so numerous that joinder of all members is impractical. Plaintiff alleges on information and belief that there are more than 40 members of the class.

76. There are questions of law and fact common to the class that predominate over any questions affecting only individual class members. The predominant common questions include:

- a. Whether defendants engaged in a pattern of sending unsolicited fax advertisements;
- b. Whether defendants thereby violated the TCPA;
- c. Whether defendants thereby engaged in unfair acts and practices, in violation of the ICFA.
- d. Whether defendants thereby converted the property of plaintiff.
- e. Whether defendants thereby created a private nuisance.
- f. Whether defendants thereby committed a trespass to chattels.

77. Plaintiff will fairly and adequately protect the interests of the class. Plaintiff has retained counsel experienced in handling class actions and claims involving unlawful business practices. Neither plaintiff nor plaintiff's counsel have any interests which might cause them not to vigorously pursue this action.

78. Plaintiff's claims are typical of the claims of the class members. All are

based on the same factual and legal theories.

79. A class action is the superior method for the fair and efficient adjudication of this controversy. The interest of class members in individually controlling the prosecution of separate claims against defendants is small because it is not economically feasible to bring individual actions.

80. Management of this class action is likely to present significantly fewer difficulties than those presented in many class actions, e.g. for securities fraud.

WHEREFORE, plaintiff requests that the Court enter judgment in favor of plaintiff and the class and against defendants for:

- a. Appropriate damages;
- b. An injunction against the further transmission of unsolicited fax advertising;
- c. Costs of suit;
- d. Such other or further relief as the Court deems just and proper.

COUNT IV – PRIVATE NUISANCE

81. Plaintiff incorporates ¶¶ 1-35.

82. Defendants' sending plaintiff and the class members unsolicited faxes was an unreasonable invasion of the property of plaintiff and the class members and constitutes a private nuisance.

83. Congress determined, in enacting the TCPA, that the prohibited conduct was a "nuisance." *Universal Underwriters Ins. Co. v. Lou Fusz Automotive Network, Inc.*, 401 F.3d 876, 882 (8th Cir. 2005).

84. Defendants acted either intentionally or negligently in creating the nuisance.

85. Plaintiff and each class member suffered damages as a result of receipt of the unsolicited faxes.

86. Defendants should be enjoined from continuing its nuisance.

CLASS ALLEGATIONS

87. Pursuant to Fed.R.Civ.P. 23(a) and (b)(3), plaintiff brings this claim on behalf of a class, consisting of (a) all persons with Illinois fax numbers, (b) who, on or after a date five years prior to the filing of this action, (c) were sent faxes in the form represented by Exhibit A (regardless of the date or location of the program or the identity of the faculty or whether labelled “Zoetis” or “Pfizer Animal Health”).

88. The class is so numerous that joinder of all members is impractical. Plaintiff alleges on information and belief that there are more than 40 members of the class.

89. There are questions of law and fact common to the class that predominate over any questions affecting only individual class members. The predominant common questions include:

- a. Whether defendants engaged in a pattern of sending unsolicited fax advertisements;
- b. Whether defendants thereby violated the TCPA;
- c. Whether defendants thereby engaged in unfair acts and practices, in violation of the ICFA.
- d. Whether defendants thereby converted the property of plaintiff.
- e. Whether defendants thereby created a private nuisance.
- f. Whether defendants thereby committed a trespass to chattels.

90. Plaintiff will fairly and adequately protect the interests of the class. Plaintiff has retained counsel experienced in handling class actions and claims involving unlawful business practices. Neither plaintiff nor plaintiff's counsel have any interests which might cause them not to vigorously pursue this action.

91. Plaintiff's claims are typical of the claims of the class members. All are based on the same factual and legal theories.

92. A class action is the superior method for the fair and efficient adjudication of this

controversy. The interest of class members in individually controlling the prosecution of separate claims against defendants is small because it is not economically feasible to bring individual actions.

93. Management of this class action is likely to present significantly fewer difficulties than those presented in many class actions, e.g. for securities fraud.

WHEREFORE, plaintiff requests that the Court enter judgment in favor of plaintiff and the class and against defendants for:

- a. Appropriate damages;
- b. An injunction against the further transmission of unsolicited fax advertising;
- c. Costs of suit;
- d. Such other or further relief as the Court deems just and proper.

COUNT V – TRESPASS TO CHATTELS

94. Plaintiff incorporates ¶¶ 1-35.

95. Plaintiff and the class members were entitled to possession of the equipment they used to receive faxes.

96. Defendants' sending plaintiff and the class members unsolicited faxes interfered with their use of the receiving equipment and constitutes a trespass to such equipment. *Chair King v. Houston Cellular*, 95cv1066, 1995 WL 1693093 at *2 (S.D. Tex. Nov. 7, 1995) (denying a motion to dismiss with respect to plaintiff's trespass to chattels claim for unsolicited faxes), vacated on jurisdictional grounds 131 F.3d 507 (5th Cir. 1997).

97. Defendants acted either intentionally or negligently in engaging in such conduct.

98. Plaintiff and each class member suffered damages as a result of receipt of the unsolicited faxes.

99. Defendants should be enjoined from continuing trespasses.

CLASS ALLEGATIONS

100. Pursuant to Fed.R.Civ.P. 23(a) and (b)(3), plaintiff brings this claim on behalf of a class, consisting of (a) all persons with Illinois fax numbers (b) who, on or after a date five years prior to the filing of this action, (c) were sent faxes in the form represented by Exhibit A (regardless of the date or location of the program or the identity of the faculty or whether labelled “Zoetis” or “Pfizer Animal Health”).

101. The class is so numerous that joinder of all members is impractical. Plaintiff alleges on information and belief that there are more than 40 members of the class.

102. There are questions of law and fact common to the class that predominate over any questions affecting only individual class members. The predominant common questions include:

- a. Whether defendants engaged in a pattern of sending unsolicited fax advertisements;
- b. Whether defendants thereby violated the TCPA;
- c. Whether defendants thereby engaged in unfair acts and practices, in violation of the ICFA.
- d. Whether defendants thereby converted the property of plaintiff.
- e. Whether defendants thereby created a private nuisance.
- f. Whether defendants thereby committed a trespass to chattels.

103. Plaintiff will fairly and adequately protect the interests of the class. Plaintiff has retained counsel experienced in handling class actions and claims involving unlawful business practices. Neither plaintiff nor plaintiff’s counsel have any interests which might cause them not to vigorously pursue this action.

104. Plaintiff’s claims are typical of the claims of the class members. All are based on the same factual and legal theories.

105. A class action is the superior method for the fair and efficient adjudication of this

controversy. The interest of class members in individually controlling the prosecution of separate claims against defendants is small because it is not economically feasible to bring individual actions.

106. Management of this class action is likely to present significantly fewer difficulties than those presented in many class actions, e.g. for securities fraud.

WHEREFORE, plaintiff requests that the Court enter judgment in favor of plaintiff and the class and against defendants for:

- a. Appropriate damages;
- b. An injunction against the further transmission of unsolicited fax advertising;
- c. Costs of suit;
- d. Such other or further relief as the Court deems just and proper.

/s/ Daniel A. Edelman
Daniel A. Edelman

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NOTICE OF LIEN AND ASSIGNMENT

Please be advised that we claim a lien upon any recovery herein for 1/3 or such amount as a court awards. All rights relating to attorney's fees have been assigned to counsel.

/s/ Daniel A. Edelman
Daniel A. Edelman

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& GOODWIN, LLC
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EXHIBIT A

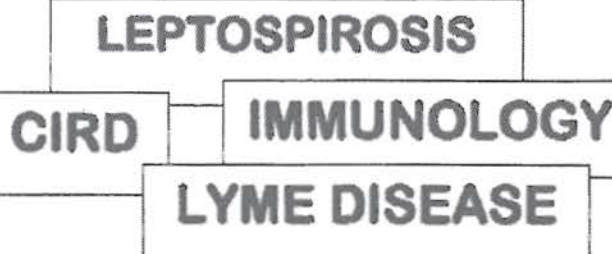
On-Line Case Rounds Series

Free In-Clinic Continuing Education
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Pfizer Animal Health

Based on the strong demand for this Series, we are pleased to announce our 2011 Schedule of Events featuring Nationally Recognized Thought-Leaders discussing ...



John Ellis, DVM, PhD, DACVP, DACVM -
Matthew Krecic, DVM, MS, MBA, DACVM -
George Moore, DVM, MS, PhD, DACVM
(SAIM), ACVPM (EPI)
James A. Roth, DVM, PhD, DACVM -

Elizabeth Settles, DVM, JD, DACVM -

"From Canine Cough to CIRD - An Evidence Based View"
"The Known and Unknown of Lyme Disease: A 2011 Update"
"Canine Leptospirosis - Is Something Changing?"
& "Vaccine Protocols - Do We Help or Hurt the Immune Response?"
"Companion Animal Vaccines - Understanding the issues influencing duration of immunity"
"Canine Infectious Respiratory Disease (CIRD): A Matrix of Misunderstanding"
& "Canine Leptospirosis: Are Your Patients Protected?"

April Events

Tuesday, April 12, 2011 - Elizabeth Settles (Lepto)	1:00 pm (ET)
Thursday, April 14, 2011 - John Ellis	12:00 pm (ET)
Wednesday, April 20, 2011 - Matthew Krecic	2:00 pm (ET)

May Events

Tuesday, May 3, 2011 - Matthew Krecic	1:00 pm (ET)
Wednesday, May 4, 2011 - George Moore (Lepto)	2:00 pm (ET)
Tuesday, May 10, 2011 - John Ellis	1:00 pm (ET)
Tuesday, May 17, 2011 - James Roth	1:00 pm (ET)
Thursday, May 19, 2011 - Matthew Krecic	9:00 pm (ET)
Wednesday, May 25, 2011 - Elizabeth Settles (CIRD)	2:00 pm (ET)

June Events

Wednesday, June 1, 2011 - Matthew Krecic	12:00 pm (ET)
Tuesday, June 7, 2011 - Elizabeth Settles (CIRD)	1:00 pm (ET)
Thursday, June 9, 2011 - George Moore (Lepto)	9:00 pm (ET)
Tuesday, June 28, 2011 - James Roth	2:00 pm (ET)

July Events

Tuesday, July 12, 2011 - George Moore (Vaccine)	9:00 pm (ET)
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August Events

Tuesday, August 2, 2011 - Elizabeth Settles (Lepto)	1:00 pm (ET)
Wednesday, August 10, 2011 - George Moore (Vaccine)	12:00 pm (ET)

Pfizer Animal Health On-Line Case Rounds are hour-long team learning events conducted over the internet. They can be accessed from your hospital, or from home. The Pfizer Animal Health On-Line Case Rounds Series feature national experts providing updates on topical issues in the prevention and management of Canine Infectious Respiratory Disease, Leptospirosis, Lyme Disease and Companion Animal Immunology/Vaccinology, with an opportunity to participate in interactive question and answer sessions at the conclusion of the conference.

These programs were reviewed and approved by the AAVSB RACE program for 1 hour of continuing education. Please contact the AAVSB RACE program at racc@aaavsb.org should you have any comments/concerns regarding this program's validity or relevancy to the veterinary profession. Call Patricia Fehl of MEDtrak Educational Services at (610) 892-3000 for further continuing education information.

To discontinue receiving fax communications for Pfizer Animal Health On-Line Case Rounds, please call 1-877-510-2769 to have your fax number removed from future communications.



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**Important Note: Registration will close one hour prior to the start of the event. If you are interested in CE Credit, you must provide your own individual e-mail address.*

If you are having difficulty with the registration process, contact MEDtrak Educational Services at (610) 892-3000.